

FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
JULY 5, 2011

**CALL TO
ORDER**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present were Gina Klempel, Scott Hollinger, Mark Hash, and Terry Kramer. Gary Krueger was absent. Allison Mouch represented the Flathead County Planning & Zoning Office.

There were 11 people in the audience.

**APPROVAL OF
MINUTES**

Klempel motioned and Kramer seconded to approve the February 1, 2011 minutes. The motion passed unanimously.

**PUBLIC
COMMENT**
*(not related to
agenda items)*

None.

**ROBERT &
SOPHIA WELLS**
(FZV 11-01)

A request by Robert & Sophia Wells for a Zoning Variance to property within the Evergreen Zoning District. The applicants are requesting a variance to Section 7.12.030 Definitions, Lot Area, of the Flathead County Zoning Regulations. The property is located at 27 Hidden Lane.

STAFF REPORT

Allison Mouch reviewed Staff Report FZV 11-01 for the Board.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

Erica Wirtila, Sands Surveying, represented the applicant. She spoke about the fact the 60 foot easement for Hidden Lane was located on the applicant's property as well as half of the easement for Sage Lane. She also talked about the original reason for purchasing the property which was to help out the land owner and subdivide for the applicant's adult children, zoning regulations, the reason for asking for the variance request and the variance request criteria. She showed neighboring property and how many homes the property has located on them on a map. Her point was the applicant was not able to enjoy the same rights their neighbors enjoyed, which created a hardship. It was not for monetary gain they wished to subdivide the property.

Robert Wells, applicant, explained he wanted to split the acreage to family transfer to his children and hoped the board would approved the application.

**BOARD
QUESTIONS**

Klempel asked if Wells paid taxes on the easement.

Wells said he did.

**PUBLIC
COMMENT**

None.

**STAFF
REBUTTAL**

Mouch clarified why some of the property surrounding the applicant's property would have more than one house on the property.

**BOARD
DISCUSSION**

The board, Mouch and Wirtila briefly discussed how the easement figured into the acreage, confusion in wording of the regulations, how the acreage would be figured if the application was undergoing subdivision review, if the roads on the property were public or private, and the cumulative land which was under the easement.

They also briefly discussed the known history of how the surrounding properties came to have more than one house on them, how many other properties had double frontages to roads, the reason for the exemption of property under easements in the regulations, what the regulations allowed and possible alternatives to a zoning variance. They also discussed distinguishing between net and gross acreage and if a townhouse could be built on R-1 zoned property.

Wells and Kramer discussed if Wells had cleared a septic system on the property and what the existing structures were.

Klempel and Wells talked about which other property owners used Hidden Lane and if it was a legal easement.

The board and Mouch discussed if the property would meet all the other criteria if it was not for the easement and the criteria which needed to be met to qualify for a variance.

Hash said he felt the board truly wanted to make the application work and approve it and if the other three members present could come up with a way to make the application work, that would be fine. He had a difficult time justifying the reasons and making the reasons fit the conditions. There was not a condition

for a misinterpretation of the regulations which he did all the time in his line of work. He would let the others make the motion; he could not come up with the wording he felt would fit the situation. He felt very uncomfortable about giving special treatment to this lot and not other lots.

Klempel said it made it difficult when the applicant came before the board and exercised good faith in the process and other people just went through the wires and that was unfair.

Hash said they did not have enough information on the other lots.

Hollinger agreed with Hash, it was unfortunate there was a misinterpretation. He offered some other possible solutions.

The board, applicant, Wirtila and Mouch discussed at length other solutions and possibilities.

**MAIN MOTION
TO ADOPT
F.O.F. AND
DENY
(FZV 11-01)**

Hollinger made a motion seconded by Hash to adopt staff report FZV 11-01 as findings-of-fact and deny.

**BOARD
DISCUSSION**

The board and applicant discussed the difficulties of the application which included reasonable use, the fact the applicant paid the taxes on the road, and neighbors' comments on the application. They also discussed if there was a road maintenance agreement, who did the upkeep on the road and other possible solutions.

Hollinger called for the vote.

**ROLL CALL TO
ADOPT F.O.F.
AND DENY
(FZV 11-01)**

On a roll call vote the motion failed due to 2-2 tie with Kramer and Klempel dissenting.

**BOARD
DISCUSSION**

Hollinger said there needed to be creative work done with the findings-of-fact if the application was to be approved. He was open to positive revision to the findings.

The board, Mouch and Wirtila discussed if the applicant could reapply if there was no action on the application, on which

properties a boundary line adjustment was feasible, the burden of the easements, and the benefits to the neighbors of the easement while the easement was a detriment to the applicant. They also discussed when the survey was taken and the process to follow now since there was a tie vote.

Klempel had trouble denying the application especially since the applicant paid taxes on the property under the road, the neighbors used the road without having to pay taxes and he was penalized in this situation for not having enough property to split due to the easement of the road.

The board discussed the appropriate process to follow.

Wirtila offered alternative wording for the findings. She asked to table the application until after the next application on the agenda was heard and she would craft new findings to be considered at that time.

There were no objections from the board.

Hollinger said they would table the application and hear the next application.

**CARRIAGE
FUNERAL
HOLDINGS, INC.
(FCU 11-01)**

A request by Carriage Funeral Holdings, Inc., for a Conditional Use Permit to allow the construction of an office/reception hall and crematorium complex at the existing Glacier Memorial Gardens Cemetery located at 2659 US Highway 93 in Kalispell. The property is located within the Evergreen, SAG-10 (Suburban Agricultural) Zoning District.

STAFF REPORT

Allison Mouch reviewed FCU 11-01 for the board.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

None.

**PUBLIC
COMMENT**

Dave Filler, 2577 Hwy 93 N, submitted a written comment to staff and summarized the letter for the board. He was against the application.

Rick Donahue, 2585 Hwy 93 N, was generally against the application.

**STAFF
REBUTTAL**

Mouch addressed the issue of smoke and fumes from the crematorium and the offices which were responsible for regulating the operation and emission standards of the crematorium. She also addressed the concerns about lighting and fencing.

**BOARD
DISCUSSION**

The board and Mouch discussed at length if DEQ regulations and federal emission standards provided a safe environment for the neighboring properties, the requirements for landscaping, and lighting.

Hollinger recognized Filler for more comment.

Filler did not have an issue with lighting; the car lot's lights next to him were very bright at night. As long as the applicant dimmed the lights somewhat, he was ok. He spoke about the newness of the information concerning mercury vapors and how the regulations concerning them were not in place yet.

The board and Mouch discussed they type of lighting which was required for the business and possible wording for a condition concerning lighting.

**MAIN MOTION
TO AMEND
FINDING #10
AND ADOPT
F.O.F.
(FCU 11-01)**

Hash made a motion seconded by Kramer to amend finding-of-fact # 10 to read:

Finding #10 – Proposed Lighting for the building, parking area and existing sign(s) would be acceptable because the applicant has stated all exterior lighting and illuminated signage will comply with the applicable zoning regulations, *and because overnight lighting for the building will be limited to security lighting only.*

And adopt staff report FCU 11-01 as findings-of-fact.

**BOARD
DISCUSSION**

The board and Mouch briefly discussed where to address the issue of lighting.

**ROLL CALL TO
ADOPT F.O.F.
(FCU 11-01)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO AMEND
CONDITION #8
AND APPROVE
(FCU 11-01)**

Hash made a motion seconded by Kramer to amend condition #8 to read;

Condition #8 – All exterior lighting on the subject property shall adhere to performance standards set forth in the Flathead County Zoning Regulations [FCZR Section 5.12]. *Lighting after 8:00 PM shall be limited to a single (1) parking lot security light and a single security light for each side of the proposed building.*

And approve FCU 11-01.

**BOARD
DISCUSSION**

The board discussed wording for a condition to limit the nighttime lighting on the buildings and parking lot.

**ROLL CALL
VOTE TO
AMEND
CONDITION #8
AND APPROVE
(FCU 11-01)**

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

Hollinger untabled FZV 11-01.

The board took a 5 min break.

The board reconvened at 7:45.

Wirtila reviewed proposed changes to the findings of fact for FZV 11-01.

The board and Mouch discussed the proposed changes at length, how often this issue arose in the office, if people inquired at the Planning Office as to what could be done on property they either owned or were looking at purchasing,

Hash didn't feel comfortable with changing some of the findings. He felt the board had to follow the criteria for a zoning variance even though they may have felt the situation warranted granting the zoning variance.

The board and Mouch discussed if the whole road easement falling on one property was unique, they continued to discuss the easement issue, the setbacks from the property boundaries, and the proper procedure to follow.

**MAIN MOTION
TO ADOPT
F.O.F. AND
DENY
(FZV 11-01)**

Hollinger made a motion seconded by Hash to adopt staff report FZV 11-01 as findings-of-fact and deny.

**BOARD
DISCUSSION**

Hollinger said he didn't like his motion, but the board had been in this situation before where there wasn't a way to make the application fit all of the criteria.

**ROLL CALL TO
ADOPT F.O.F.
AND DENY
(FZV 11-01)**

On a roll call vote the motion failed due to 2-2 tie with Kramer and Klempel dissenting.

OLD BUSINESS

None.

NEW BUSINESS

There was a brief discussion on future agendas for the board.

Mouch and Kramer discussed the issue of the difficulty of having an application where the acreage was on the borderline of qualifying for a split.

Mouch said anyone could propose a text amendment and she would bring the issue to the attention of the planning board.

The board discussed some of the options which might be available to the applicant.

ADJOURNMENT

The meeting was adjourned at approximately 8:17 pm. on a motion by Klempel. The next meeting will be held at 6:00 p.m. on August 2, 2011.

Scott Hollinger, Chairman

Donna Valade, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 9 / 6 / 11*